

Appellate Docket Number: 14-14-00589-CV  
Appellate Case Style: 1717 Bissonnet, LLC  
Vs. Penelope Loughhead, et al

Companion Case No.:

FILED IN  
14th COURT OF APPEALS  
HOUSTON, TEXAS

7/29/2014 3:34:35 PM

Amended/corrected statement:

DOCKETING STATEMENT (Civil)

CHRISTOPHER A. PRINE  
Clerk

Appellate Court: 14th Court of Appeals

(to be filed in the court of appeals upon perfection of appeal under TRAP 32)

I. Appellant	II. Appellant Attorney(s)
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☐ Person ☒ Organization (choose one)  
Organization Name: 1717 Bissonnet, L.L.C.  
First Name:   
Middle Name:   
Last Name:   
Suffix:   
Pro Se: ☐

☒ Lead Attorney  
First Name: Ramon  
Middle Name: G.  
Last Name: Viada  
Suffix: III.  
Law Firm Name: Viada & Strayer  
Address 1: 17 Swallow Tail Court  
Address 2:   
City: The Woodlands  
State: Texas Zip+4: 77381  
Telephone: 281-419-6338 ext.   
Fax: 281-661-8887  
Email: rayviada@viadastrayer.com  
SBN: 20559350

I. Appellant	II. Appellant Attorney(s)
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☐ Person ☒ Organization (choose one)  
Organization Name: 1717 Bissonnet, L.L.C.  
First Name:   
Middle Name:   
Last Name:   
Suffix:   
Pro Se: ☐

☐ Lead Attorney  
First Name: H.  
Middle Name: Fred  
Last Name: Cook  
Suffix:   
Law Firm Name: Wilson, Cribbs & Goren P.C.  
Address 1: 2500 Fannin St.  
Address 2:

	City: <input type="text" value="Houston"/> State: <input type="text" value="Texas"/> Zip+4: <input type="text" value="77002"/> Telephone: <input type="text" value="713-222-9000"/> ext. <input type="text"/> Fax: <input type="text" value="713-229-8824"/> Email: <input type="text" value="hfcook@wcglaw.net"/> SBN: <input type="text" value="04732500"/>
<b>III. Appellee</b>	<b>IV. Appellee Attorney(s)</b>
<input checked="" type="checkbox"/> Person <input type="checkbox"/> Organization (choose one) Organization Name: <input type="text"/> First Name: <input type="text" value="SEE ATTACHED EXHIBIT A"/> Middle Name: <input type="text"/> Last Name: <input type="text"/> Suffix: <input type="text"/> Pro Se: <input type="radio"/>	<input checked="" type="checkbox"/> Lead Attorney First Name: <input type="text" value="Jean"/> Middle Name: <input type="text" value="C."/> Last Name: <input type="text" value="Frizzell"/> Suffix: <input type="text"/> Law Firm Name: <input type="text" value="Reynolds, Frizzell, Black, Doyle, Allen &amp; Oldham LLC"/> Address 1: <input type="text" value="1100 Louisiana"/> Address 2: <input type="text" value="Suite 3500"/> City: <input type="text" value="Houston"/> State: <input type="text" value="Texas"/> Zip+4: <input type="text" value="77002"/> Telephone: <input type="text" value="713-485-7200"/> ext. <input type="text"/> Fax: <input type="text" value="713-485-7250"/> Email: <input type="text" value="jfrizzell@reynoldsfrizzell.com"/> SBN: <input type="text" value="07484650"/>

## V. Perfection Of Appeal And Jurisdiction

Nature of Case (Subject matter or type of case): Real Property

Date order or judgment signed: July 18, 2014

Type of judgment: Jury Trial

Date notice of appeal filed in trial court: July 19, 2014

If mailed to the trial court clerk, also give the date mailed:

Interlocutory appeal of appealable order: ☐ Yes ☒ No

If yes, please specify statutory or other basis on which interlocutory order is appealable (See TRAP 28):

Accelerated appeal (See TRAP 28): ☐ Yes ☒ No

If yes, please specify statutory or other basis on which appeal is accelerated:

Parental Termination or Child Protection? (See TRAP 28.4): ☐ Yes ☒ No

Permissive? (See TRAP 28.3): ☐ Yes ☒ No

If yes, please specify statutory or other basis for such status:

Agreed? (See TRAP 28.2): ☐ Yes ☒ No

If yes, please specify statutory or other basis for such status:

Appeal should receive precedence, preference, or priority under statute or rule: ☐ Yes ☒ No

If yes, please specify statutory or other basis for such status:

Does this case involve an amount under \$100,000? ☐ Yes ☒ No

Judgment or order disposes of all parties and issues: ☒ Yes ☐ No

Appeal from final judgment: ☒ Yes ☐ No

Does the appeal involve the constitutionality or the validity of a statute, rule, or ordinance? ☐ Yes ☒ No

## VI. Actions Extending Time To Perfect Appeal

Motion for New Trial: ☐ Yes ☒ No

If yes, date filed:

Motion to Modify Judgment: ☐ Yes ☒ No

If yes, date filed:

Request for Findings of Fact and Conclusions of Law: ☐ Yes ☒ No

If yes, date filed:

Motion to Reinstate: ☐ Yes ☒ No

If yes, date filed:

Motion under TRCP 306a: ☐ Yes ☒ No

If yes, date filed:

Other: ☐ Yes ☒ No

If other, please specify:

## VII. Indigency Of Party: (Attach file-stamped copy of affidavit, and extension motion if filed.)

Affidavit filed in trial court: ☐ Yes ☒ No

If yes, date filed:

Contest filed in trial court: ☐ Yes ☒ No

If yes, date filed:

Date ruling on contest due: N/A

Ruling on contest: ☐ Sustained ☐ Overruled

Date of ruling:

## VIII. Bankruptcy

Has any party to the court's judgment filed for protection in bankruptcy which might affect this appeal? ☐ Yes ☒ No

If yes, please attach a copy of the petition.

Date bankruptcy filed:

Bankruptcy Case Number:

## IX. Trial Court And Record

Court:

Clerk's Record:

County:

Trial Court Clerk: ☒ District ☐ County

Trial Court Docket Number (Cause No.):

Was clerk's record requested? ☒ Yes ☐ No

If yes, date requested:

Trial Judge (who tried or disposed of case):

If no, date it will be requested:

First Name:

Were payment arrangements made with clerk?

Middle Name:

☒ Yes ☐ No ☐ Indigent

Last Name:

(Note: No request required under TRAP 34.5(a),(b))

Suffix:

Address 1:

Address 2 :

City:

State:  Zip + 4:

Telephone:  ext.

Fax:

Email:

Reporter's or Recorder's Record:

Is there a reporter's record? ☒ Yes ☐ No

Was reporter's record requested? ☒ Yes ☐ No

Was there a reporter's record electronically recorded? ☐ Yes ☒ No

If yes, date requested:

If no, date it will be requested:

Were payment arrangements made with the court reporter/court recorder? ☒ Yes ☐ No ☐ Indigent

☒ Court Reporter      ☐ Court Recorder  
☐ Official      ☐ Substitute

First Name: Sheri  
Middle Name:  
Last Name: Ullrich  
Suffix:  
Address 1: 201 Caroline, 11th Floor  
Address 2:  
City: Houston  
State: Texas Zip + 4: 77002  
Telephone: 713-368-6242 ext.  
Fax:  
Email: sheri\_ullrich@justex.net

#### X. Supersedeas Bond

Supersedeas bond filed: ☐ Yes ☒ No If yes, date filed:  
Will file: ☒ Yes ☐ No

#### XI. Extraordinary Relief

Will you request extraordinary relief (e.g. temporary or ancillary relief) from this Court? ☐ Yes ☒ No  
If yes, briefly state the basis for your request:

#### XII. Alternative Dispute Resolution/Mediation (Complete section if filing in the 1st, 2nd, 4th, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, or 14th Court of Appeal)

Should this appeal be referred to mediation? ☐ Yes ☒ No

If no, please specify: SEE ATTACHED EXHIBIT B

Has the case been through an ADR procedure? ☒ Yes ☐ No

If yes, who was the mediator?

What type of ADR procedure?

At what stage did the case go through ADR? ☒ Pre-Trial ☒ Post-Trial ☐ Other

If other, please specify:

Type of case? Tort (Nuisance in Fact)

Give a brief description of the issue to be raised on appeal, the relief sought, and the applicable standard for review, if known (without prejudice to the right to raise additional issues or request additional relief):

SEE ATTACHED EXHIBIT C

How was the case disposed of? Other (Judgment on the Verdict)

Summary of relief granted, including amount of money judgment, and if any, damages awarded. Damages awarded to owners of 20 plaintiff properties

If money judgment, what was the amount? Actual damages: \$1.2 million

Punitive (or similar) damages: N/A

Attorney's fees (trial): N/A

Attorney's fees (appellate): N/A

Other: N/A

If other, please specify:

Will you challenge this Court's jurisdiction? ☐ Yes ☒ No

Does judgment have language that one or more parties "take nothing"? ☒ Yes ☐ No

Does judgment have a Mother Hubbard clause? ☒ Yes ☐ No

Other basis for finality:

Rate the complexity of the case (use 1 for least and 5 for most complex): ☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5

Please make my answer to the preceding questions known to other parties in this case. ☒ Yes ☐ No

Can the parties agree on an appellate mediator? ☐ Yes ☒ No

If yes, please give name, address, telephone, fax and email address:

Name	Address	Telephone	Fax	Email

Languages other than English in which the mediator should be proficient:

Name of person filing out mediation section of docketing statement: Ramon G. Viada III

### XIII. Related Matters

List any pending or past related appeals before this or any other Texas appellate court by court, docket number, and style.

Docket Number: N/A Trial Court:

Style:

Vs.

#### XIV. Pro Bono Program: (Complete section if filing in the 1st, 3rd, 5th, or 14th Courts of Appeals)

The Courts of Appeals listed above, in conjunction with the State Bar of Texas Appellate Section Pro Bono Committee and local Bar Associations, are conducting a program to place a limited number of civil appeals with appellate counsel who will represent the appellant in the appeal before this Court.

The Pro Bono Committee is solely responsible for screening and selecting the civil cases for inclusion in the Program based upon a number of discretionary criteria, including the financial means of the appellant or appellee. If a case is selected by the Committee, and can be matched with appellate counsel, that counsel will take over representation of the appellant or appellee without charging legal fees. More information regarding this program can be found in the Pro Bono Program Pamphlet available in paper form at the Clerk's Office or on the Internet at [www.tex-app.org](http://www.tex-app.org). If your case is selected and matched with a volunteer lawyer, you will receive a letter from the Pro Bono Committee within thirty (30) to forty-five (45) days after submitting this Docketing Statement.

Note: there is no guarantee that if you submit your case for possible inclusion in the Pro Bono Program, the Pro Bono Committee will select your case and that pro bono counsel can be found to represent you. Accordingly, you should not forego seeking other counsel to represent you in this proceeding. By signing your name below, you are authorizing the Pro Bono committee to transmit publicly available facts and information about your case, including parties and background, through selected Internet sites and Listserv to its pool of volunteer appellate attorneys.

Do you want this case to be considered for inclusion in the Pro Bono Program? ☐ Yes ☒ No

Do you authorize the Pro Bono Committee to contact your trial counsel of record in this matter to answer questions the committee may have regarding the appeal? ☐ Yes ☒ No

Please note that any such conversations would be maintained as confidential by the Pro Bono Committee and the information used solely for the purposes of considering the case for inclusion in the Pro Bono Program.

If you have not previously filed an affidavit of Indigency and attached a file-stamped copy of that affidavit, does your income exceed 200% of the U.S. Department of Health and Human Services Federal Poverty Guidelines? ☐ Yes ☒ No

These guidelines can be found in the Pro Bono Program Pamphlet as well as on the internet at <http://aspe.hhs.gov/poverty/06poverty.shtml>.

Are you willing to disclose your financial circumstances to the Pro Bono Committee? ☐ Yes ☒ No

If yes, please attach an Affidavit of Indigency completed and executed by the appellant or appellee. Sample forms may be found in the Clerk's Office or on the internet at <http://www.tex-app.org>. Your participation in the Pro Bono Program may be conditioned upon your execution of an affidavit under oath as to your financial circumstances.

Give a brief description of the issues to be raised on appeal, the relief sought, and the applicable standard of review, if known (without prejudice to the right to raise additional issues or request additional relief; use a separate attachment, if necessary).

#### XV. Signature

Signature of counsel (or pro se party)

Date: 7/29/2014

Printed Name: Ramon G. Viada III

State Bar No.: 20559350

Electronic Signature: /s/ Ramon G. Viada, III  
(Optional)

## XVI. Certificate of Service

The undersigned counsel certifies that this docketing statement has been served on the following lead counsel for all parties to the trial court's order or judgment as follows on **7/29/2014** .

Signature of counsel (or pro se party)

Electronic Signature: **/s/ Ramon G. Viada III**  
(Optional)

State Bar No.: **20559350**

Person Served

Certificate of Service Requirements (TRAP 9.5(e)): A certificate of service must be signed by the person who made the service and must state:

- (1) the date and manner of service;
- (2) the name and address of each person served, and
- (3) if the person served is a party's attorney, the name of the party represented by that attorney

Please enter the following for each person served:

Date Served: **7/29/2014**

Manner Served: **eServed**

First Name: **Jean**

Middle Name: **C.**

Last Name: **Frizzell**

Suffix:

Law Firm Name: **Reynolds, Frizzell, Black, Doyle, Allen & Oldham**

Address 1: **1100 Louisiana**

Address 2: **Suite 3500**

City: **Houston**

State: **Texas**

Zip+4: **77002**

Telephone: **713-485-7200**

ext.

Fax: **713-485-7250**

Email: **jfrizzell@reynoldsfrizzell.com**

If Attorney, Representing Party's Name:



## **EXHIBIT A**

### **XI. Appellees**

Luong Nguyen  
Lam Nguyen and Katherine Hoang, jointly  
Jamie Flatt  
Penelope Loughhead  
Donald Verplanken  
Norman and Suannah Rund, jointly  
Achim and Diana Bell, jointly  
Jeanne Meis  
Mary Van Dyke  
Ralph and Leslie Miller, jointly  
Yin and Surong Zhang, jointly  
Martha Gariepy  
Stephen Roberts  
Suzanne Powell  
Michelle Jennings and Michael Tetzlaff, jointly  
James and Allison Clifton, jointly  
Kimberly Bell  
Richard and Mary Baraniuk, jointly  
Kenneth Reusser and Xanthi Couroucli, jointly  
Earle Martin  
Dinzel Graves  
Sarah Morian  
Michael Clark  
Marc Favre-Massartic  
Raja Gupta  
Laura Lee & Dico Hassad  
Peter & Adriana Oliver  
Ed Follis  
Frank & Jeanette Stokes  
Steven Lin  
Yi-Wen Michelle Pu  
Howard Epps  
Phyllis Epps

## **EXHIBIT B**

### **XI. Alternative Dispute Resolution/Mediation.**

*If no, please specify:* The parties have been ordered to mediation twice, once before the verdict and once after it. Former District Judge Susan Soussan served as the mediator for both mediations. The post-verdict lasted approximately ten weeks, and the parties thoroughly explored and exhausted every potential avenue of settlement. After the trial court ruled on post-verdict motions and announced the judgment on appeal, the parties again attempted to discuss settlement through Judge Soussan. All efforts to settle this case have ended in impasse. Appellant believes any further effort to mediate this case will end in impasse, thus wasting the parties' resources and delaying ultimate resolution of the case by the courts.

**EXHIBIT C**  
**(Preliminary Statement of Issues/Standards of Review/Relief Sought)**

1. The jury's finding that the Project, if built in the future, will create a nuisance is not a tort that can support a recovery of market value damages. De Novo Review.
2. No legally sufficient evidence exists to prove that the Project as a whole, or that any specific design feature of the Project individually, is or will be "abnormal and out of place" in relation to any of the Appellees' properties. No Evidence Review.
3. No legally sufficient evidence exists to prove that the Project, if built, will substantially interfere with the use or enjoyment of any of the Appellees' properties save and except for the properties predicted by Appellees' expert to experience severe subsidence – Van Dyck, Miller, Gariepy, and Zhang. No Evidence Review.
4. The following Appellees lack standing because they did not request a jury finding or offer any evidence of ownership of the properties they alleged to own – Luong Nguyen (1750 Wroxton Court), Martha Gariepy (5308 Southhampton Estates), James & Allison Clifton (1714 Wroxton Ct.), and Donald Verplancken (1734 Wroxton Ct.). De Novo & No Evidence Review.

Appellant will request that the Court of Appeals reverse the judgment of the trial court in part and render a judgment for the Appellant that Appellees shall take nothing from the Appellant, and that all costs in the trial and appeals courts shall be taxed against all of the Appellees.